IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Date of Decision: October 30, 2007

FAO No.2932 of 2006

Oriental Insurance Co.Ltd. .....Appellant

Versus

Vijay Laxmi Sharma and others .....Respondents

FAO No. 2933 of 2006

Oriental Insurance Co. Ltd. ... Appellant

Versus

Vipul Madan and another ... Respondents.

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Man Mohan, Advocate for
Mr.Suman Jain, Advocate for the appellant.

Mr.Bhag Singh, Advocate for respondents No.1 to 5.

Mr.Randeep Singh, Advocate for respondents No.6 and 7.

(FAO No. 2932 of 2006)

Present: Mr.Man Mohan, Advocate for
Mr.Suman Jain, Advocate for the appellant.

Mr.Bhag Singh, Advocate for respondent No.1.

Mr.Randeep Singh, Advocate for respondents No.2 and 3.

(FAO No. 2933 of 2006)

S. D. ANAND, J.

1. The Insurance Company has preferred the present appeal against award dated 13.3.2006 vide which a compensation of Rs.5,04,000/- was awarded in favour of the respondent-claimants who had filed a plea in

the context for compensation in respect of the death of Munish Kumar Sharma (husband of respondent-claimant Vijay Laxmi, father of Deepshikha Sharma and Gaurav Sharma and son of respondent-claimants Sh.Devkinandan Sharma and Smt.Mahindrawati Sharma).

2. Respondent-claimant No.1-Vipul Madan filed the plea (in the other petition) for the award of compensation in respect of the death of his father Puran Chand in the course of that very accident.

3. The plea of the respondent-claimants was as under:

4. On 29.8.2004, at about 12.30 A.M. Puran Chand was driving a Bajaj Chetak Scooter bearing No.HR-01-L-4362 from Rajpura to Ambala. Munish Kumar Sharma was a pillion rider on the vehicle. When the scooter carrying both of them reached on the rear of a drain bridge in the area of village Rajgarh, the offending vehicle bearing registration No.HR-66-0195, which was proceeding ahead of the Scooter, applied sudden brakes without giving any indication therefor. On that account, the Scooter hit the offending vehicle. Both the riders i.e. Puran Chand and Munish Kumar Sharma fell off the Scooter and sustained multiple and grievous injuries. At A.P.Jain Hospital, Rajpura, to which they were transported, they were declared brought dead. The offending vehicle was being driven at the time of the impugned accident by respondent Kanhiya Kumar Singh (hereinafter referred to as “the driver).

5. The plea, put forth by the claimants, was resisted by the petitioner-driver as also the registered owner thereof. The petitioner-insurer also contested it by averring that the claimants had not come to the Court with clean hands and the petition was bad for non-joinder of necessary parties. Apart from averring that the petitions were collusive, as between

the claimants and the driver and registered owner of the offending vehicle, it was alleged that the insurer is to be exonerated from the liability as the person driving the Scooter was not holding a valid and effective driving licence.

6. The following issues were framed by the learned Tribunal at the trial:

1. Whether accident in question causing the deaths of Munish Kumar Sharma and Puran Chand took place due to rash and negligent driving of respondent No.1 while driving Canter No.HR-66-0195 ? OPP
2. If issue No.1 is proved, to what amount of compensating the claimants are entitled to and from whom ? OPP
3. Whether the claim petition is bad for non-joinder of necessary parties, owner and insurer of Scooter No.HR-01-L-4362 ? OPR-3
4. Whether respondent No.1 was not having valid and effective driving licence? If so, to what effect? OPR-3
5. Whether claim petition has been filed by the claimants in collusion with respondents No.1 & 2 ? OPR-3
6. Relief.

7. The learned Tribunal recorded findings in favour of the claimants under all the issues.

8. The insurer has preferred the two appeals against the award of compensation in the petition filed by Vijay Laxmi etc. and Vipul Madan.

9. Learned counsel for the appellant argued, at the very outset, that the Fast Track Court which dealt with the file, was not competent to deal with the matter inasmuch as it had not been notified as a Tribunal in terms of the Motor Vehicles Act.

10. The plea raised deserves to be outrightly rejected. The Presiding Officers of the Fast Track Court had been duly notified to be Additional District Judges (Ad hoc) and there is already a notification issued by the Competent Authority notifying the Additional District Judges

as Tribunals for purposes of dealing the files pertaining to claimants under the Motor Vehicles Act. The plea shall stand repelled accordingly.

11. Learned counsel for the appellant argued that the very presence of the PW at that unearthly hour at 12.30 A.M. is doubtful inasmuch as he had no cause to be at the spot at that point of time. This aspect had been duly noticed and dealt with by the learned Tribunal and I do not find anything invalid in the appreciation of evidence by the learned Tribunal in that context. Even otherwise, it may be noticed that there is adequate material on the file to prove that the driver is facing a prosecution in a court of law on a charge of having caused the impugned accident by driving the offending vehicle rashly and negligently. By the very nature of things, a challan against an accused would be put in the Court only after the Investigating Agency has been able to obtain evidence to proceed against the accused. In the present case, a certified copy of the report under Section 173 of the Code of Criminal Procedure has been placed on the record as Exhibit P4. Apart from placing on record Exhibit P5 (a certified copy of the FIR, Exhibit P6 copy the post mortem report, Exhibit P7 copy of the rough site plan of the occurrence, Exhibit P8 medical report of the offending vehicle, Exhibit P9 mechanical report of the Scooter), the claimants have also placed on file the photographs of the spot (Exhibits P10 to P15).

12. Thus, the plea raised by the claimants with regard to the manner in which the impugned accident had taken place, was testified on oath by PW Ashwani Kumar As against it, the driver of the offending vehicle opted to refrain from entering into the witness box. The driver of the offending vehicle was the best circumstanced to buttress the plea of denial of involvement of the offending vehicle in the impugned accident. He was

also the best qualified to falsify the affirmative evidence adduced by the claimants to fix his accountability for the causing of the impugned accident.

13. In the light of the above facts, I have no hesitation in affirming the finding recorded by the learned Tribunal holding the driver-respondent to be responsible for having caused the impugned accident.

14. Learned counsel for the appellant, then, argued that the amount of compensation is excessive. In the context, it was argued that there is no proper material before the Tribunal to hold that deceased Munish Kumar was drawing salary at Rs.23359.19 per month.

15. The plea raised is completely devoid of force. Initially, PW3 P.D.Dutta (Special Assistant, State Bank of Patiala, Ambala city) had proved salary certificates, Exhibits P2 and P3 which were to the effect that the deceased used to get salary at Rs.20,516/- per month, besides petrol allowance for 25/30 litres petrol per month, allowance for two newspapers and a sum of Rs.150/- per month as entertainment allowance. As noticed in the award itself, this witness was recalled and he made a record-based statement to the effect that, as per the pay scales revised w.e.f. 1.11.2002, deceased Munish Kumar would have received salary at Rs.23,359.19/- at the time of death. In that context, he proved fresh salary certificate, Exhibit P17. In that view of things, the assessment of income of the deceased is in order. In so far as the assessment of the income of deceased Puran Chand is concerned, learned counsel could not invite my attention to any lacuna in the course thereof. The learned Tribunal had, in a well-reasoned order in that petition, awarded only 1/3rd of the compensation to Vipul Madan and had passed an order that the other part of the compensation shall enure for the benefit of other legal representatives of deceased who had not joined

Vipul Madan as a claimant and who had also not been impleaded as a party thereto.

16. For the foregoing discussion, both the appeals are held to be bereft of merit and are ordered to be dismissed.

(S. D. ANAND)
October 30, 2007 **JUDGE**

SRM/VKD

Note: Whether referred to reporter ? Yes/No